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## TESTIMONY OF ATTORNEY DEBORAH G. STEVENSON IN SUPPORT OF H.J. RESOLUTION #65

I'm Attorney Deborah Stevenson, Executive Director of National Home Education Legal Defense and a member of the Connecticut Grassroots Alliance. I'm here to speak in favor of House Joint Resolution 65, a Resolution Memorializing Congress to Abide by the Tenth Amendment.

The Constitution of the United States is a document that establishes our federal government and limits the power of that government. Article One specifies that all legislative powers granted by the Constitution are vested in the Congress. Article One, Section 8, specifically enumerates the powers granted by the Constitution to Congress. Because there was a concern at the time of the adoption of the Constitution that the federal government might encroach on the powers of the States, the Bill of Rights was adopted. In fact, the Preamble to the Bill of Rights, the first ten amendments to the Constitution, explains that the amendments were added as "further declaratory and restrictive clauses" in order "to prevent misconstruction or abuse" of the powers of the federal government. Among those further declaratory and restrictive clauses was the Tenth Amendment. It's very clear in its simplicity. It states, "***The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively, or to the people.***"

The resolution you consider today simply sends a message to Congress that the State of Connecticut is aware that on numerous occasions the federal government has enacted laws that are beyond the scope of its enumerated powers in violation of the Constitution, and calls upon Congress to abide by the Constitution to exercise only those powers delegated to it by the Constitution. This resolution asks nothing more than that which Congress is supposed to do already. Therefore, the resolution should receive your resounding support.

However, as thankful as I am that you have raised this bill for a public hearing and as hopeful as I am that it will receive your resounding support, I also believe that coupled with the resolution, you should support any effort in the future to adopt a method by which the legislature may review for its Constitutionality any federal law proposed or adopted now, or in the future. Under the Tenth Amendment, powers that are not specifically delegated to the federal government are powers that are retained by the States and by the people. The power to determine the legality of federal laws is not a power that is specifically delegated to the federal government by the Constitution. Therefore, that power is already retained by the States and by the people. While we all know that the Supreme Court took it upon itself in 1803, in a case called Marbury v. Madison, to determine that the federal judiciary has the power to interpret the Constitutionality of federal laws, and while that practice has been accepted through the years, that power is not one that is specifically delegated to the Court by the Constitution. Nonetheless, having accepted that practice, State courts also have taken it upon themselves to interpret the Constitutionality of laws. Even if this body does not accept the language of the Tenth Amendment that the legislature already has the retained power to determine the legality of federal laws, it is reasonable to conclude that if it is acceptable for one branch of the government, the judicial branch, to take it upon itself to have the power to determine the Constitutionality of federal laws, it also is acceptable for the another branch of government, the legislature, to take it upon itself to determine the Constitutionality of federal laws, since all branches of government are co-equal branches. Indeed, the legislature routinely considers the Constitutionality of laws, particularly and most recently, regarding budgetary matters and the separation of powers. It is reasonable, therefore, to conclude that the legislature already retains the power to do what we seek – to make sure that all laws are in conformance with the Constitution.

This is not a political issue. This is not about Republicans or Democrats or any other political party. This is about the Constitution, pure and simple. For too many years, across too many administrations, too many of our government officials have failed to adequately consider Constitutional principles. For the sake of accomplishing political or social goals, as laudable as they may be, too many of our government officials have not asked the most important question before adopting such legislation – do we have the Constitutional authority to do this, whatever it may be? Unfortunately, there are many laws on the books now, and there undoubtedly will be more in the future, that were adopted without any Constitutional authority. My concern is that Connecticut ultimately will be faced with a choice – comply with an unconstitutional law that may have severe consequences for the State and its citizens, or review that law for its Constitutionality and decide what, if anything, to do about it. According to the Tenth Amendment, the State already has the power to do this, but it does not have any specific method in place to accomplish this. If at some point in time, this Resolution or another measure is amended or adopted that would put in place such a method, I ask you to approve that method. You are the representatives of the people. You have all taken an oath to preserve, protect, and defend the Constitution. You are the bulwark against any and all violations of the Constitution. I ask you to please take your oath seriously, adopt the Resolution and seriously consider what you can do now, and in the future, to adopt any appropriate method to review the legality of any and all federal laws, when, and if, it becomes necessary.